

1 NOT FOR PUBLICATION
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Matthew Steven Gray, No. CV-19-01783-PHX-SRB
10 Petitioner,
11 v.
12 Charles L Ryan, et al.,
13 Respondents.
14

ORDER

15
16 Petitioner Matthew Steven Gray filed his Petition for Writ of Habeas Corpus
17 on March 18, 2019 challenging a state court conviction that became final on or about
18 July 9, 2010. The Magistrate Judge issued her Report and Recommendation on
19 November 21, 2019 finding the Petition untimely and not subject to the actual
20 innocence exception to the Anti-Terrorism and Effective Death Penalty Act's
21 (AEDPA) one-year statute of limitations. The Magistrate Judge recommended that
22 the Petition be dismissed with prejudice and that a Certificate of Appealability be
23 denied. Petitioner filed timely Objections on November 27, 2019 to which
24 Respondents responded.

25 In his Objections, Petitioner does not dispute the Magistrate Judge's recitation
26 of the pertinent dates of his state court conviction, post-conviction relief petition, its
27 denial and the dismissal of his petition for review by the Arizona Court of Appeals
28 as untimely. He does not dispute that the one-year statute of limitations began to

1 run on June 10, 2009. Petitioner appears to argue that his April 18, 2018 state court
2 filing of his Motion Requesting Relief from an ‘Unlawful Sentence’ Imposed in an
3 ‘Unlawful Manner with Extraordinary Circumstances Existing’ Requiring an
4 Evidentiary Hearing restarted the one-year statute of limitations. To the extent that
5 is Petitioner’s argument he is wrong. As the Magistrate Judge explained subsequent
6 state court collateral review petitions do not restart the statute of limitations.

7 Petitioner also appears to argue that his April 18, 2018 state court filing
8 suffices for a showing of actual innocence that provides an equitable exception to
9 AEDPA’s statute of limitations. But Petitioner fails to explain how his state court
10 motion addressing an alleged unlawful sentence establishes actual innocence of the
11 charges to which he pled guilty in 2008. The Court has reviewed that state court
12 motion (Doc 12-2 p. 22-66) and nothing therein establishes or even attempts to
13 establish factual innocence of the crimes of conviction.

14 IT IS ORDERED overruling Petitioner’s Objections to the Report and
15 Recommendation of the Magistrate Judge.

16 IT IS FURTHER ORDERED adopting the Report and Recommendation of
17 the Magistrate Judge as the Order of this Court. (Doc. 14)

18 IT IS FURTHER ORDERED dismissing with prejudice Petitioner’s Petition
19 for Writ of Habeas Corpus.

20 IT IS FURTHER ORDERED denying a Certificate of Appealability because
21 dismissal of the Petition for Writ of Habeas Corpus is justified by a plain procedural
22 bar.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED directing the Clerk to enter judgment
2 accordingly.

3

4 Dated this 10th day of January, 2020.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



Susan R. Bolton
United States District Judge